United States Court of Appeals

for the Second Circuit

APPENDIX

77-1295

77-1295

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Docket No. 77-1295

ERNEST MALIZIA
Defendant-Appellant

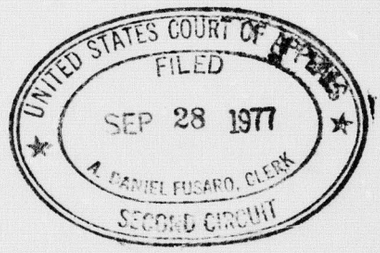
against

UNITED STATES OF AMERICA
Plaintiff-Appellee

Appeal from Final Judgement of the United States District Court for the Southern District of New York

BRIEF OF DEFENDANT-APPELLANT and appendix

ERNEST MALIZIA



PAUL S. BRENNER, ESQ.
Attorney for Defendant-
Appellant
350 Fifth Avenue
New York, N.Y. 10001
(212) 736-8397

PAGINATION AS IN ORIGINAL COPY

TABLE OF CONTENTS

Questions Presented on Appeal.....P. 1

Summary of Facts..... 1a

Summary of Argument..... 2

ARGUMENT:

I. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ALLOW APPELLANT TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL..... 2

II. THE TRIAL COURT VIOLATED APPELLANT's CONSTITUTIONAL RIGHT TO COMPULSORY PROCESS..... 4

III. THE TRIAL COURT VIOLATED APPELLANT's CONSTITUTIONAL RIGHT AGAINST SELF-INCRIMINATION BY MANDATING THE ORDER OF PRESENTATION OF DEFENDANT's CASE..... 5

IV. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HAVE THE CASE HEARD IN ANOTHER DISTRICT..... 6

CONCLUSION..... 8

CITATIONS

GIDEON v. WAINWRIGHT, 372 U.S. 335, 83 S. Ct. 792, 9 L.Ed 2d 799.. 2

POWELL v. ALABAMA, 287 U.S. 45, 53 S. Ct. 55, 77 L.E. 158..... 2

FARETTA v. CALIFORNIA, 422 U.S. 806, 95 S.C. 2225, 45 L.Ed 2d 562. 3

U.S. v. PLATTNER, 330 F2d 271, 274..... 3

U.S. v. HILL, 526 F2d 1019..... 3

U.S. v. DePUGH, 452 F2d 915..... 3

JOHNSON v. AVERY, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed 2d. 718..... 3

WASHINGTON v. STATE OF TEXAS, 388 U.S. 14, 87 S. Ct. 1920 18 L.Ed 2d, 1019..... 4

WASHINGTON v. CLEMMER, 339 F. 2d 715..... 4

JENKINS v. McKEITHER, 395 U.S. 411..... 4

WILLIAMS v. DEEGAN, 279 F. Supp. 53 (D.C.N.Y. 1967)..... 4

NICK v. U.S., 406 F. Supp. 1 (1975)..... 4

GREENWELL v. U.S., 317 F2d 108 (D.C. Cir. 1963)..... 4

WELSH v. U.S., 404 F2d 414 (5th Cir. 1968)..... 4

FARETTA v. CALIFORNIA, 422 U.S. 806, 95 S. Ct. 2225, 45 L.Ed.2d 562..P. 4-5

GALLEGAS v. TURNER, 256 F. Supp 670 Aff. 386 F2d 440, Cert. Den. 88 S. Ct. 1647, 390 U.S. 1045, 20 L.Ed. 2d 308..... 5

BROOKS v. TENNESSEE, 406 U.S. 605, 92 Ct. 1891, 32 L.Ed. 2d. 358..... 6

QUESTIONS PRESENTED ON APPEAL

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO PROVIDE COUNSEL DESIRED BY THE APPELLANT

II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HAVE THE CASE HEARD BY AN IMPARTIAL MAGISTRATE

III. WHETHER APPELLANT'S CONSTITUTIONAL RIGHTS WERE VIOLATED BY THE DENIAL OF HIS REQUESTS TO HAVE COMPULSORY PROCESS ISSUE AND, AS A RESULT, BY THE INABILITY OF THE APPELLANT TO HAVE AN EFFECTIVE DEFENSE AND TO BE ABLE TO DETERMINE THE ORDER OF PRESENTATION OF EVIDENCE

SUMMARY of FACTS

Mr. Malizia was arrested on May 31, 1977 and charged, by way of an information, 77CR 402, with violating Title 18, United States Code, Section 113 ( ). (Appendix p. 1) The instant information was based on an alleged assault which occurred on May 2, 1977. Mr. Malizia was on trial before Judege Irving Ben Cooper in the United States District Court, Southern District of New York in Courtroom 307 of the United States Courthouse at Foley Square. Mr. Malizia had been reading material into the record when Judge Cooper asked that it be copied into the record to save time. Mr. Malizia disagreed with the ruling of the Court and expressed his dissatisfaction at length. Prior to the completion of this discussion, Judge Cooper ordered that the jury be brought in for the purpose of listening to final arguments of the attorneys, Fred Virela for the Government and Joseph Stone for the defendant. At this point, Mr. Malizia turned around, and either by accident or design, struck his attorney. Prior to this act, numerous applications had been made to the Court by both Mr. Stone and Mr. Malizia for Appointed Counsel to be Relieved. All such applications were denied by Judge Cooper. At the trial, only two witnesses testified: Richard Mamaro, Judge Cooper's Law Secretary and Michael R. O'Neil, a United States Marshall. At the conclusion of the trial, Judge Pollack found the defendant guilty and sentenced him to six months to run concurrent with other sentences. (Appendix p. 2)

SUMMARY OF ARGUMENT

The appellant contends that his constitutional rights were violated by the failure of the trial court to provide him with compulsory process for witnesses on his behalf, and by the insistence that appellant testify without first having heard these witnesses or forfeit the right to testify.

The appellant contends that the trial court abused its discretion in failing to allow him to have effective assistance of a non-lawyer as counsel, in conjunction with his court-appointed lawyer, as the Court may exercise its discretion in this regard. The trial court also abused its discretion in failing to have the case transferred to another district so as to avoid any possibility of prejudice or bias.

ARGUMENT I

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO ALLOW APPELLANT TO HAVE EFFECTIVE ASSISTANCE OF COUNSEL.

The right to have effective assistance of counsel cannot be disputed GIDEON v. WAINRIGHT, 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed 2d 799 (1963). POWELL v. ALABAMA, 287 U.S.45, 53 S.Ct. 55, 77 L.E.158 (1932). The constitutional right to defend oneself Pro Se likewise is firmly established. The choice of an attorney must be voluntary and intelligent, and a State cannot force a defendant to accept a state-appointed public defender

FARETTA v. CALIFORNIA, 422 U.S. 806, 95 S.C. 2225, 45 L.Ed 2d 562 (1975). In a federal criminal prosecution, the minimal procedural requirements include the right to effective assistance of counsel. The right to represent oneself and personally manage and conduct his defense is implicit in the Fifth Amendment Guarantee of Due Process and in the Sixth Amendment Guarantee of Assistance of Counsel U.S. v. PLATTNER, 330 F2d 271, 274 (1964).

The appellant, during pre-trial proceedings (Appendix, pp 3-5), requested that a fellow prisoner be allowed to act as his counsel. It is not contended that the constitutional right of self-representation has been extended to allowing non-lawyers to act as counsel. However, it is within the discretion of the Court to allow various methods of representation to be used in effecting the right to assistance of counsel or to pro se representation. U.S. v. HILL, 526 F2d 1019 (1975) ("Hybrid" representation); U.S. v. DePUGH, 452 F2d 915 (1971) (Advisory Counsel). Certainly there is nothing wrong with a prisoner using the services of other prisoners when those other prisoners have legal skills JOHNSON v. AVERY, 393 U.S. 483, 89 S.Ct. 747, 21 L.Ed 2d. 718 (1969). Apparently the prisoner whose services were requested in this case had such skills. Certainly, there would have been a much better opportunity for a fair trial if the Court had allowed the "counsel" of defendant's choice to at least "sit in" on the proceedings and advise the appellant, even if the

Court had declined to dispense with appointed counsel's services. In this way, the appellant could have had more "effective" assistance with counsel that he trusted.

ARGUMENT II

THE TRIAL COURT VIOLATED APPELLANT'S CONSTITUTIONAL RIGHT TO COMPULSORY PROCESS

The right to present a defense is, of course, a basic foundation of our judicial system; therefore the right to offer testimony of witnesses and to compel their attendance is a basic constitutional right. WASHINGTON v. STATE OF TEXAS, 388 U.S.14, 87 S.Ct. 1920, 18 L.Ed 2d 1019; WASHINGTON v. CLEMMER, 339 F.2d 715 (1965); JENKINS v. McKEITHER, 395 U.S. 411 (1969); U.S. ex rel WILLIAMS v. DEEGAN, 279 F.Supp. 53 (D.C.N.Y. 1967); NICK v. U.S. 406 F.Supp 1 (1975). Indigent defendants are also entitled to compulsory process, at public expense if necessary. GREENWELL v. U.S., 317 F2d 108 (D.C. Cir. 1963); WELSH v. U.S. 404 F2d 414 (5th Cir. 1968).

Appellant at his trial requested that subpoenas be issued for certain witnesses who he believed would be beneficial to his case. The appointed counsel disagreed with appellant and the Court denied the request (Appendix pp. 3-7). While counsel may have been exercising his best legal judgment, his views may not take precedence over the expressed views of his client. The right to make a defense is personal, and counsel should be the servant of his client, not his master. FARETTA v.

CALIFORNIA, 422 U.S.806, 95 S.Ct. 2225, 45 L.Ed.2d 562 (1975). If appellant desired to have these witnesses called, they should have been so called, and to refuse to do so denied defendant his constitutional right to present evidence in his own defense. The Court should have subpoened the witnesses on its own initiative, if faced with the continued refusal of counsel to do so, or it could have ordered counsel to follow the wishes of his client in the matter. In GALLEGAS v. TURNER, 256 F.Supp 670 Aff. 386 F2d 440, Cert. Den. 88 S.Ct. 1647, 390 U.S. 1045, 20 L.Ed. 2d 308, the Court held that it was error not to appoint new counsel for an appeal when the original appointed counsel declined to make oral arguments and told the Court informally that he saw no merit in the defendant's contentions, if there was any possible merit in the defendant's appeal. Certainly if there was any possible merit to defendant's case in calling these witnesses, this should have been done and failure to do so was error. The Court did not make any effort to pursuade counsel to call these witnesses, but instead took his word that they were unnecessary.

ARGUMENT III

THE TRIAL COURT VIOLATED APPELLANT'S CONSTITUTIONAL RIGHT AGAINST SELF-INCRIMINATION BY MANDATING THE ORDER OF PRESENTATION OF DEFENDANT'S CASE

It is unconstitutional for a State to tell a defendant that, if he wishes to testify at all in his own defense, he must do so at the start of the defense's case or not at all. BROOKS v. TENNESSLE, 406 U.S. 605, 92 S.Ct. 1891, 32 L.Ed.2d 358 (1972). Such a rule violates the defendant's privilege against self-incrimination by penalizing him for keeping silent. In addition, such a rule destroys the defendant's ability to present an effective defense, since the tactical considerations of defense strategy may not require him to testify if other defense evidence is sufficient. There is no way of knowing this if he must speak first.

Appellant contends that the action of the trial judge in denying the right of the defense to subpoena witnesses in effect forced the defendant to keep silent and not testify, since he had to hear the testimony of these witnesses before determining whether to testify himself. The Judge, by denying these witnesses to the defendant, tried to force the defendant to become the one and only witness for the defense case, which the defendant refused to do. (Appendix pp. 3-7)

ARGUMENT IV

THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO HAVE THE CASE HEARD IN ANOTHER DISTRICT

28 USCA 144 provides that a Judge with personal bias or prejudice may not hear a case but must be replaced on that case by another judge. The appellant believes that the trial judge abused his discretion by failing to transfer the case not only

to another Judge but to a different district. The alleged assault occurred in Judge Cooper's Court. Since Judge Pollack and Judge Cooper are both sitting in the same Court, it seems unrealistic to expect that Judge Pollack would not have been at least partly influenced by his professional relationship with Judge Cooper when he considered the appellant's case. Certainly his attitude towards the appellant must have been affected by the appellant's alleged behavior in front of a colleague.

At the time of the start of proceedings, neither the defendant nor his attorney had reason to believe that the Judge might be biased. However, a review of the proceedings indicates that the Judge's attitude towards defendant and counsel was hostile and therefore not impartial (Appendix page 8). This attitude may be understandable, since the incident took place in the Courtroom of a fellow Judge and would obviously be considered by another Judge to be an atrocious act, since it disrupted the decorum and dignity of a Court, whether intentionally or not. The fact that both Judges work in the same building and obviously know each other make it very difficult to believe that a prejudicial attitude, though possibly unconscious, did not exist. The proper solution would have been to transfer the case to another Judge in another District.

CONCLUSION

For any of the reasons stated, the judgement of the District Court should be reversed and a new trial ordered.

Respectfully submitted,

PAUL S. BRENNER, ESQ.
Attorney for Defendant-Appellant
350 Fifth Avenue
Suite 7220
New York, New York 10001

(212) 736-8397

September 27, 1977

A P P E N D I X

Certified Copy of Information	P. 1
Certified Copy of Judgement and Probation/Commitment Order	P. 2
Trial Transcript	Pp. 3-11

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA	:	77 CRIM. 0402
- v -	:	INFORMATION
ERNEST MALIZIA,	:	77 Cr.
Defendant.	:	

The United States Attorney charges:

On or about the 2nd day of May, 1977, in the Southern District of New York, ERNEST MALIZIA, the defendant, within the special maritime and territorial jurisdiction of the United States, to wit, the United States Courthouse, Foley Square, New York, New York, without just cause or excuse, unlawfully, wilfully and knowingly did assault Joseph I. Stone, Esq. by striking him on the face.

(Title 18, United States Code, Section 113(d).)

MICROFILM
MAY 31 1977

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

United States of America vs.

United States District Court

THE SOUTHERN DISTRICT OF NEW YORK

DEFENDANT ERNEST MALTZIA

DOCKET NO. 77 CR. 402 (MP)

JUDGMENT AND PROBATION/COMMITMENT ORDER

COUNSEL

In the presence of the attorney for the government the defendant appeared in person on this date — MONTH June DAY 16, YEAR 1977

[ ] WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

[X] WITH COUNSEL Paul Brenner (Name of counsel)

PLEA

[ ] GUILTY, and the court being satisfied that there is a factual basis for the plea, [ ] NOLO CONTENDERE, [X] NOT GUILTY

FINDING & JUDGMENT

There being a finding/verdict of [ ] NOT GUILTY. Defendant is discharged [X] GUILTY.

Defendant has been convicted as charged of the offense(s) of unlawfully, wilfully and knowingly did assault Joseph L. Stone,Esq. by striking him on the face, without just cause or excuse, within the special maritime and territorial jurisdiction of the United States, to wit, the United States Courthouse, Foley Square, New York, New York. (T. 18, U.S.Code, Section 113(a)(5).

SENTENCE OR PROBATION ORDER

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) MONTHS. This sentence is to run CONCURRENTLY with the sentence previously imposed by Judge Motley on March 19, 1974 in 74 CR. 1[illegible] by Judge Tenney on May 24, 1977 in 74 CR. 1013 and by Judge Cooper on June 15, 1977 in 77 CR. 387.

Defendant advised of his right to appeal.

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

In addition to the special conditions of probation imposed above, it is hereby ordered that the general conditions of probation set out on the reverse side of this judgment be imposed. The Court may change the conditions of probation, reduce or extend the period of probation at any time during the probation period or within a maximum probation period of five years permitted by law, may issue a warrant and revoke probation for a violation occurring during the probation period.

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

It is ordered that the Clerk deliver a certified copy of this judgment and commitment to the U.S. Marshal or other qualified officer.

SIGNED BY

[X] U.S. District Judge

[ ] U.S. Magistrate

/s/ Milton Pollack

MILTON POLLACK

Date June 16, 1977

FILED

JUN 16 1977

S. D. OF N. Y.

BEST COPY AVAILABLE

pgm

We promptly notified the Magistrate that because of the unavailability of Mr. Cohen a new appointee should be promptly selected. Mr. Cohen stated that he could not serve in this matter because he was occupied. He was relieved, his appointment was therefore not acceptable.

What else do you want to --

THE DEFENDANT: I was not notified until last night when Mr. Brenner came over.

I have a right to be represented by my choice at no cost to the Government under CJA. My choice is a fellow inmate named Harold Koenigsberg whom I have confidence in and trust in. I would make a full and honest good-faith defense in my behalf. I feel in good that under the Sixth Amendment of the United States Constitution I have a right to assistance of counsel to make my defense.

THE COURT: You are reading something that Mr. Koenigsberg gave you. I want to hear you. Start again and read it out loud.

Did he write this out for you?

THE DEFENDANT: Yes.

THE COURT: Koenigsberg?

THE DEFENDANT: Yes.

THE COURT: I will tell you about him too when you are through reading it. I want to hear it.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

pgm

THE DEFENDANT: I have a right to be represented by my choice at no cost to the Government under CJA.

THE COURT: He forgot a word there. You have a right to be represented by an attorney of your choice.

THE DEFENDANT: I will get to that.

THE COURT: He left out a word there in that first sentence. I am calling it to your attention.

THE DEFENDANT: I will get to that.

My choice is a fellow inmate named Harold Koenigsberg whom I have confidence and trust in to make a full and honest good-faith defense in my behalf.

I feel in good faith that under the Sixth Amendment of the United States Constitution I have a right for assistance of counsel to make my defense. My free and honest choice in good faith is Harold Koenigsberg. I want Harold Koenigsberg to represent me, and I move this Court for a full hearing on this issue under the Sixth Amendment of the United States Constitution.

To get the assistance of counsel, counsel does not mean in the Sixth Amendment an attorney at law or a member of the bar of this Court; it means just what it says: My right to assistance of counsel, and that it is my right, and I move here and now to exercise that right, and have Harold Koenigsberg so appointed.

pgm

I would like to have a hearing on the credibility of Mr. Koenigsberg and see if he is capable of handling this situation.

THE COURT: Where is Mr. Koenigsberg?

THE DEFENDANT: MCC.

THE COURT: He is serving time?

THE DEFENDANT: Yes.

THE COURT: You met him at the MCC?

THE DEFENDANT: Yes.

THE COURT: He volunteered his services to you?

THE DEFENDANT: Yes, sir.

THE COURT: Is Mr. Koenigsberg a lawyer?

THE DEFENDANT: Is he a lawyer?

THE COURT: Yes.

THE DEFENDANT: I guess he is not. He is a prisoner, but he has defended himself in prior cases.

THE COURT: He has defended himself personally?

THE DEFENDANT: Yes.

THE COURT. In connection with his own troubles?

THE DEFENDANT: Yes.

THE COURT: He is not a lawyer though, is he?

THE DEFENDANT: That's a matter of dispute.

THE COURT: Is he a member of the bar in good standing?

slm

MR. BRENNER: I make a motion to dismiss on the basis that the People have not shown probable cause that a crime was committed, nor that the defendant committed the crime.

THE COURT: Motion denied.

MR. BRENNER: I have, with the assistance of a court order, I have spoken to all the jurors that I was able to get in touch with on the case who sat during the trial, and as an officer of the court I represent to the Court that if those jurors were called as jurors, they do not recall exactly happened with this incident. Most of them have said they were just coming in and they have no recollection of the --

MR. SHWARTZ: Your Honor, I have --

THE COURT: You are interrupting counsel.

MR. SHWARTZ: I apologize.

THE COURT: What did you say?

MR. BRENNER: The jurors I spoke to had no recollection of how the incident took place. They said they were just coming into the courtroom and had seen the marshals taking the defendant out of the court.

THE COURT: Do you have any proof to present?

MR. BRENNER: I myself would like to call the defendant to the witness stand. The defendant has certain

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

other witnesses which he would like to have in the court which I don't believe are necessary.

THE COURT: Don't give me a travelogue. Have you got any witnesses?

MR. BRENNER: Other than the defendant, I do not. But the defendant would like to address the Court.

THE COURT: Are you calling the defendant to the stand?

MR. BRENNER: After the defendant addresses the Court.

THE COURT: I beg pardon?

MR. BRENNER: After the defendant addresses the Court.

THE COURT: This is not a debate or a public forum.

Do you have a witness?

THE DEFENDANT: Call Judge Cooper and his assistant, and the court stenographer. They were present also. There were other marshals present also. Call them.

THE COURT: Are you taking the stand, Mr. Malizia?

THE DEFENDANT: When they come in, if I decide to take it, I'll take it, your Honor.

THE COURT: I see. You don't wish to take the stand now?

slm

THE DEFENDANT: At this moment, no.

THE COURT: Is there any other proof that you wish to offer?

MR. BRENNER: None other than that.

THE COURT: The defendant rests?

MR. BRENNER: Except for the defendant taking the stand, yes.

THE COURT: Then let the defendant take the stand right now. I will give him as much time as it takes for him to walk from there to the witness stand.

THE DEFENDANT: I am not ready, your Honor.

THE COURT: You are not ready?

All right, that concludes the offer of proof, does it, Mr. Brenner?

MR. BRENNER: The defendant wants Judge Cooper--

THE COURT: I can't hear you when you are in your seat.

MR. BRENNER: The defendant would like Judge Cooper - would like your Honor to sign a subpoena to have Judge Cooper, U.S. Attorney Virella, and the court stenographe called to the witness stand.

It is my opinion as defense counsel that they are not necessary witnesses for this incident; that the witnesses who have testified, and my discussions with the

jurors who were witnesses, would give my client a fair trial, as fair a trial as I think he could get in this Courthouse in view of the incident and where it occurred. However, I believe my client's testimony would be important to the Court, and I have asked him to take the witness stand.

The defendant has the final choice on whether he wants to take the witness stand or not.

The defendant insists upon having these other witnesses, which I do not feel would benefit the defense. Therefore, I have not decided on my own to subpoena them. I am a defense counsel appointed to this case, and it is my opinion that they are not necessary witnesses, although they were in the court, that they would not be beneficial to the defense of this case, and therefore I have chose not to ask your Honor to subpoena them.

THE COURT: With due regard for your process of thought and the defendant's desires, he may take the witness stand now or forego the opportunity.

Get on your feet, Mr. Malizia.

THE DEFENDANT: Yes, sir.

THE COURT: Do you wish to testify in your own behalf?

THE DEFENDANT: I am not ready until all the witnesses come in, your Honor.

slm

THE COURT: The trial is concluded.

The Government rests?

MR. SHWARTZ: The Governments rests, your Honor.

THE COURT: On the basis of the evidence produced here, the Court finds that the defendant wilfully, knowingly and with criminal intent, within the special territorial jurisdiction of the United States, assaulted one Joseph Stone by striking him and wounding him intentionally and without just cause or excuse, and the defendant is found guilty.

A presentence report will be prepared and the date for sentence will be fixed for June 14 at 2:15 p.m.

A copy of the presentence report is made available to counsel at the Probation Office.

In view of the fact that the Probation Office has advised the Court that they have a fairly recent report in connection with the matter that was before other judges, you will have no difficulty in making an examination of the same.

The court is adjourned until 2:15.

(Recess until 2:15 p.m.)

- - -

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020

pgm

present in the courtroom.

THE COURT: I take a rather dim view of your recital. It has every appearance of an obfuscating maneuver for the purpose of frustrating the forward progress of the case.

On the other hand, I will give you additional time to think through a rational course of procedure on your part, and I will reset this case, or continue the trial of this case, this case having been called for trial at the appointed time at ten o'clock this morning, I will continue the trial of this case until Tuesday morning at ten-thirty. Please be ready at this time.

At your request, and to facilitate you, I had word delivered to Mr. Stone, the former attorney of the defendant, to do the Court the courtesy of being present at two o'clock. He is prelsent. You have had an opportunity now to talk with him. Since he is a person equally available to both sides, should you desire his presence you will have to proceed in the ordinary course to obtain his presence by appropriate subpoena.

Again, I assume that you will do nothing that is intended to make a hippodrome of this case, but it will in good faith require only such persons as the interests of your client and the best interests of justice require.

SOUTHERN DISTRICT COURT REPORTERS, U.S. COURTHOUSE
FOLEY SQUARE, NEW YORK, N.Y. - 791-1020